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SAN BERNARDINO, et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

STEFFON BARBER, an individual,

Plaintiff,

v.

COUNTY OF SAN BERNARDINO, a
municipal entity,, DEPUTY
CHRISTOPHER ALFRED, and DOES
1through 10, Inclusive

Defendant.

Case No. 5:22-cv-00625-KK-SHK

*[District Judge, Kenly Kiya Kato,
Magistrate Judge, Shashi H.
Kewalramani]*

**STIPULATED PROTECTIVE ORDER
RE: CONFIDENTIAL DOCUMENTS**

TO THE HONORABLE COURT:

By and through their counsel of record in this action, plaintiff STEFFON BARBER (“Plaintiff”) and defendants COUNTY OF SAN BERNARDINO and DEPUTY CHRISTOPHER ALFRED (“Defendants”) – the parties – hereby stipulate for the purpose of jointly requesting that the honorable Court enter a protective order re confidential documents in this matter [and pursuant to Fed. R. Civ. P. 5.2, 7, and 26, as well as U.S. Dist. Ct., S.D. Cal., Local Rules 7-1 and 52-4.1; and any applicable Orders of the Court] – as follows:

GOOD CAUSE STATEMENT

1. **GOOD CAUSE STATEMENT.**

1.1 Contentions re Harm from Disclosure of Confidential Materials.

Defendant contends that there is good cause and a particularized need for a protective order to preserve the interests of confidentiality and privacy in peace officer personnel file records and associated investigative or confidential records for the following reasons.

First, Defendant contends that peace officers have a federal privilege of privacy in their personnel file records: a reasonable expectation of privacy therein that is underscored, specified, and arguably heightened by the *Pitchess* protective procedure of California law. *See Sanchez v. Santa Ana Police Dept.*, 936 F.2d 1027, 1033-1034 (9th Cir. 1990); *Hallon v. City of Stockton*, 2012 U.S. Dist. LEXIS 14665, *2-3, 12-13 (E.D. Cal. 2012) (concluding that “while “[f]ederal law applies to privilege based discovery disputes involving federal claims,” the “state privilege law which is consistent with its federal equivalent significantly assists in applying [federal] privilege law to discovery disputes”); *Soto v. City of Concord*, 162 F.R.D. 603, 613 n. 4, 616 (N.D. Cal. 1995) (peace officers have constitutionally-based “privacy rights [that] are not inconsequential” in their police personnel records); *cf.* Cal. Penal Code §§ 832.7, 832.8; Cal. Evid. Code §§ 1040-1047. Defendant further contends that uncontrolled disclosure of such personnel file information can **threaten the safety of non-party witnesses, officers, and their families/associates.**

Second, Defendant contends that municipalities and law enforcement agencies have federal deliberative-executive process privilege, federal official information privilege, federal law enforcement privilege, and federal attorney-client privilege (and/or attorney work product protection) interests in the personnel files of their peace officers – particularly as to those portions of peace officer personnel files that contain critical self-analysis, internal deliberation/decision-making or evaluation/analysis, or communications for the purposes of obtaining or rendering legal advice or analysis – potentially including but not limited to evaluative/analytical portions of Internal Affairs type records or reports, evaluative/analytical portions of supervisory records

1 or reports, and/or reports prepared at the direction of counsel, or for the purpose of
2 obtaining or rendering legal advice. *See Sanchez*, 936 F.2d at 1033-1034; *Maricopa*
3 *Audubon Soc’y v. United States Forest Serv.*, 108 F.3d 1089, 1092-1095 (9th Cir.
4 1997); *Soto*, 162 F.R.D. at 613, 613 n. 4; *Kelly v. City of San Jose*, 114 F.R.D. 654,
5 668-671 (N.D. Cal. 1987); *Tuite v. Henry*, 181 F.R.D. 175, 176-177 (D. D.C. 1998);
6 *Hamstreet v. Duncan*, 2007 U.S. Dist. LEXIS 89702 (D. Or. 2007); *Admiral Ins. Co.*
7 *v. United States Dist. Ct.*, 881 F.2d 1486, 1492, 1495 (9th Cir. 1988). Defendant
8 further contends that such personnel file records are restricted from disclosure by the
9 public entity’s custodian of records pursuant to applicable California law and that
10 **uncontrolled release is likely to result in needless intrusion of officer privacy;**
11 **impairment in the collection of third-party witness information and statements**
12 **and related legitimate law enforcement investigations/interests; and a chilling of**
13 **open and honest discussion regarding and/or investigation into alleged**
14 **misconduct that can erode a public entity’s ability to identify and/or implement**
15 **any remedial measures that may be required.**

16 Third, Defendant contends that, since peace officers do not have the same rights
17 as other private citizens to avoid giving compelled statements, it is contrary to the
18 fundamental principles of fairness to permit uncontrolled release of officers’
19 compelled statements. *See generally Lybarger v. City of Los Angeles*, 40 Cal.3d 822,
20 828-830 (1985); *cf.* U.S. Const., amend V.

21 Accordingly, Defendant contends that, without a protective order preventing
22 such, production of confidential records in the case can and will likely substantially
23 impair and harm defendant public entity’s interests in candid self-critical analysis,
24 frank internal deliberations, obtaining candid information from witnesses, preserving
25 the safety of witnesses, preserving the safety of peace officers and peace officers’
26 families and associates, protecting the privacy officers of peace officers, and
27 preventing pending investigations from being detrimentally undermined by
28 publication of private, sensitive, or confidential information – as can and often does

1 result in litigation.

2 Plaintiff agrees that there is Good Cause for a Protective Order so as to preserve
3 the respective interests of the parties without the need to further burden the Court with
4 such issues. Specifically, the parties jointly contend that, absent this Stipulation and
5 its associated Protective Order, the parties' respective privilege interests may be
6 impaired or harmed, and that this Stipulation and its associated Protective Order may
7 avoid such harm by permitting the parties to facilitate discovery with reduced risk that
8 privileged and/or sensitive/confidential information will become matters of public
9 record.

10 1.2. The parties jointly contend that there is typically a particularized need
11 for protection as to any medical or psychotherapeutic records because of the privacy
12 interests at stake therein. Because of these sensitive interests, a Court Order should
13 address these documents rather than a private agreement between the parties.

14 1.3. The parties therefore stipulate that there is Good Cause for, and hereby
15 jointly request that the honorable Court issue/enter, a Protective Order re confidential
16 documents consistent with the terms and provisions of this Stipulation. However, the
17 entry of a Protective Order by the Court pursuant to this Stipulation shall not be
18 construed as any ruling by the Court on the aforementioned legal statements or
19 privilege claims in this section (§ 1), nor shall this section be construed as part of any
20 such Court Order.

21 **A. PURPOSES AND LIMITATIONS.**

22 Disclosure and discovery activity in this action are likely to involve production
23 of confidential, proprietary, or private information for which special protection from
24 public disclosure and from use for any purpose other than prosecuting or defending
25 this litigation would be warranted. Accordingly, the parties hereby stipulate to and
26 petition the court to enter the following Stipulation and an associated Order.

27 The parties acknowledge that this Stipulation and associated Order does not
28 confer blanket protections on all disclosures or responses to discovery and that the

1 protection it affords extends only to the specified information or items that are entitled
2 to treatment as confidential.

3 The parties further acknowledge, as set forth below, that this Stipulation and
4 Order creates no entitlement to file confidential information under seal, except to the
5 extent specified herein; Central District Local Rules 79-5.1 and 79-5.2 set(s) forth the
6 procedures that must be followed and reflects the standards that will be applied when
7 a party seeks permission from the court to file material under seal.

8 Nothing in this Stipulation or associated Order shall be construed so as to
9 require or mandate that any Party disclose or produce privileged information or
10 records that could be designated as Confidential Documents/Protected Material
11 hereunder.

12 **2. DEFINITIONS**

13 2.1 Action: this pending federal law suit.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of the
17 medium or how generated, stored, or maintained) or tangible things that qualify for
18 protection under standards developed under Federal Rule of Civil Procedure 26(c)
19 and/or applicable federal privileges. This material includes, but is not limited to,
20 medical records, psychotherapeutic records, and autopsy photographs; as well as
21 peace officer personnel records as defined by California Penal Code sections 832.8,
22 832.5, 832.7 and the associated case law; and other similar confidential records
23 designated as such.

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
25 support staff).

26 2.5 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 2.8 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
14 this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party or are affiliated with a law firm which
16 has appeared on behalf of that party, and includes support staff.

17 2.11 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.13 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”

28 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material

1 from a Producing Party.

2 **3. SCOPE**

3 The protections conferred by this Stipulation and its associated Order cover not
4 only Protected Material/Confidential Documents (as defined above), but also (1) any
5 information copied or extracted from Protected Material; (2) all copies, excerpts,
6 summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected
8 Material. However, the protections conferred by this Stipulation and its associated
9 Order do *not* cover the following information: (a) any information that is in the public
10 domain at the time of disclosure to a Receiving Party or becomes part of the public
11 domain after its disclosure to a Receiving Party as a result of publication not involving
12 a violation of this Order, including becoming part of the public record through trial or
13 otherwise; and (b) any information known to the Receiving Party prior to the
14 disclosure or obtained by the Receiving Party after the disclosure from a source who
15 obtained the information lawfully and under no obligation of confidentiality to the
16 Designating Party.

17 Except to the extent specified herein (if any), any use of Protected Material at
18 trial shall not be governed by this Order, but may be governed by a separate
19 agreement or order.

20 Any use of Protected Material at trial shall be governed by the orders of the
21 trial judge. This Order does not govern the use of Protected Material at trial.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs.

26 Final disposition shall be deemed to be the later of (1) dismissal of all claims
27 and defenses in this action, with or without prejudice; and (2) final judgment herein
28 after the completion and exhaustion of all appeals, rehearings, remands, trials, or

1 reviews of this action, including the time limits for filing any motions or applications
2 for extension of time pursuant to applicable law.

3 **5. DESIGNATION OF PROTECTED MATERIAL**

4 5.1. Exercise of Restraint and Care in Designating Material for Protection

5 Each Party or non-party that designates information or items for protection
6 under this Stipulation and its associated Order must take care to limit any such
7 designation to specific material that qualifies under the appropriate standards. A
8 Designating Party must take care to designate for protection only those parts of
9 material, documents, items, or oral or written communications that qualify – so that
10 other portions of the material, documents, items or communications for which
11 protection is not warranted are not swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routine designations are prohibited. Designations that
13 are shown to be clearly unjustified, or that have been made for an improper purpose
14 (e.g., to unnecessarily encumber or retard the case development process, or to impose
15 unnecessary expenses and burdens on other parties), expose the Designating Party to
16 sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection, that Designating Party must
19 promptly notify all other Parties that it is withdrawing the inapplicable designation.

20 5.2. Manner and Timing of Designations. Except as otherwise provided in
21 this Order, or as otherwise stipulated or ordered, material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of
26 depositions or other pretrial or trial proceedings, and regardless of whether produced
27 in hardcopy or electronic form), that the Producing Party affix the legend
28 "CONFIDENTIAL: THESE DOCUMENTS ARE SUBJECT TO THE TERMS AND

1 CONDITIONS OF A PROTECTIVE ORDER, Case No. 5:24-cv-00171-MRA-
2 SHK”, to each page that contains Protected Material. If only a portion or portions of
3 the material on a page qualifies for protection, the Producing Party also must clearly
4 identify the protected portion(s) (e.g., by making appropriate markings in the margins)
5 and must specify, for each portion that it is “CONFIDENTIAL.” The placement of
6 such “CONFIDENTIAL” stamp on such page(s) shall not obstruct the substance of
7 the page’s (or pages’) text or content and shall be in the margin of the document
8 whenever possible.

9 A Party or Non-Party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has
11 indicated which material it would like copied and produced. During the inspection
12 and before the designation, all of the material made available for inspection shall be
13 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
14 it wants copied and produced, the Producing Party must determine which documents,
15 or portions thereof, qualify for protection under this Order. Then, before producing
16 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
17 legend to each page that contains Protected Material. If only a portion or portions of
18 the material on a page qualifies for protection, the Producing Party also must clearly
19 identify the protected portion(s) (e.g., by making appropriate markings in the
20 margins).

21 (b) for testimony given in depositions that the Designating Party identify the
22 Disclosure or Discovery Material on the record, before the close of the deposition all
23 protected testimony.

24 (c) for information produced in some form other than documentary, and for
25 any other tangible items (including but not limited to information produced on disc or
26 electronic data storage device), that the Producing Party affix in a prominent place on
27 the exterior of the container or containers in which the information or item is stored
28 the legend “CONFIDENTIAL.” If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portions, specifying the material as “CONFIDENTIAL.”

3 5.3. Inadvertent Failures to Designate. If timely corrected (preferably,
4 though not necessarily, within 30 days of production or disclosure of such material),
5 an inadvertent failure to designate qualified information or items as
6 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to
7 secure protection under this Stipulation and its associated Order for such material.

8 If material is appropriately designated as “CONFIDENTIAL” *after* the material
9 was initially produced, the Receiving Party, on timely notification of the designation,
10 must make reasonable efforts to assure that the material is treated in accordance with
11 this Stipulation and its associated Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court's
15 Scheduling Order.

16 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1 *et seq.*

18 6.3. The burden of persuasion in any such challenge proceeding shall be on
19 the Designating Party. Frivolous challenges, and those made for an improper purpose
20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
21 expose the Challenging Party to sanctions. Unless the Designating Party has waived
22 or withdrawn the confidentiality designation, all parties shall continue to afford the
23 material in question the level of protection to which it is entitled under the Producing
24 Party’s designation until the Court rules on the challenge.

25 6.4. Withdrawal of “CONFIDENTIAL” Designation. At its discretion, a
26 Designating Party may remove Protected Material/Confidential Documents from
27 some or all of the protections and provisions of this Stipulation and its associated
28 Order at any time by any of the following methods:

1 (a) Express Written Withdrawal. A Designating Party may withdraw a
2 “CONFIDENTIAL” designation made to any specified Protected Material
3 /Confidential Documents from some or all of the protections of this Stipulation and
4 its associated Order by an express withdrawal in a writing signed by such Party (or
5 such Party’s Counsel, but not including staff of such Counsel) that specifies and
6 itemizes the Disclosure or Discovery Material previously designated as Protected
7 Material/Confidential Documents that shall no longer be subject to all or some of the
8 provisions of this Stipulation and Order. Such express withdrawal shall be effective
9 when transmitted or served upon the Receiving Party. If a Designating Party is
10 withdrawing Protected Material from only some of the provisions/ protections of this
11 Stipulation and Order, such Party must state which specific provisions are no longer
12 to be enforced as to the specified material for which confidentiality protection
13 hereunder is withdrawn: otherwise, such withdrawal shall be construed as a
14 withdrawal of such material from all of the protections/provisions of this Stipulation
15 and Order;

16 (b) Express Withdrawal on the Record. A Designating Party may withdraw
17 a “CONFIDENTIAL” designation made to any specified Protected
18 Material/Confidential Documents from all of the provisions/protections of this
19 Stipulation and its associated Order by verbally consenting in court proceedings on
20 the record to such withdrawal – provided that such withdrawal specifies the
21 Disclosure or Discovery Material previously designated as Protected Material/
22 Confidential Documents that shall no longer be subject to any of the provisions of this
23 Stipulation and Order. A Designating Party is not permitted to withdraw Protected
24 Material from only some of the protections/provisions of this Stipulation and Order
25 by this method;

26 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
27 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”
28 designation made to any specified Protected Material/Confidential Documents from

1 all of the provisions/protections of this Stipulation and Order by either (1) making
2 such Protected Material/Confidential Records part of the public record – including
3 but not limited to attaching such as exhibits to any filing with the court without
4 moving, prior to such filing, for the court to seal such records; or (2) failing to timely
5 oppose a Challenging Party’s motion to remove a “CONFIDENTIAL” designation to
6 specified Protected Material/Confidential Documents. Nothing in this Stipulation and
7 Order shall be construed so as to require any Party to file Protected
8 Material/Confidential Documents under seal, unless expressly specified herein.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1. Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a non-party in connection with this case
12 only for preparing, prosecuting, defending, or attempting to settle this litigation – up
13 to and including final disposition of the above-entitled action – and not for any other
14 purpose, including any other litigation or dispute outside the scope of this action.
15 Such Protected Material may be disclosed only to the categories of persons and under
16 the conditions described in this Stipulation and its associated Order. When the above
17 entitled litigation has been terminated, a Receiving Party must comply with the
18 provisions of section 13, below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Stipulation and its Order.

22 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the Court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated CONFIDENTIAL
25 only to:

26 (a) the Receiving Party’s Outside Counsel of record in this action, as well
27 as employees of such Counsel to whom it is reasonably necessary to disclose the
28 information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation – each of whom, by accepting receipt of such Protected Material, thereby agree to be bound by this Stipulation and Order;

(c) Experts (as defined in this Stipulation and Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation – each of whom, by accepting receipt of such Protected Material, thereby agree to be bound by this Stipulation and Order;

(d) court reporters, their staffs, and Professional Vendors to whom disclosure is reasonably necessary for this litigation – each of whom, by accepting receipt of such Protected Material, thereby agree to be bound by this Stipulation and Order;

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary – each of whom, by accepting receipt of such Protected Material, thereby agree to be bound by this Stipulation and Order. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must have a confidential designation affixed by the court reporter to such pages containing Protected Material and such may not be disclosed to anyone except as permitted under this Stipulation and its Protective Order.

(f) the author or custodian of a document containing the information that constitutes Protected Material, or other person who otherwise possessed or knew the information.

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3. Notice of Confidentiality. Prior to producing or disclosing Protected Material/Confidential Documents to persons to whom this Stipulation and its Order permits disclosure or production (see section 8.2, *supra*), a Receiving Party shall provide a copy of this Stipulation and Order to such persons so as to put such persons

1 on notice as to the restrictions imposed upon them herein: except that, for court
2 reporters, Professional Vendors, and for witnesses being provided with Protected
3 Material during a deposition, it shall be sufficient notice for Counsel for the Receiving
4 Party to give the witness a verbal admonition (on the record, for witnesses) regarding
5 the provisions of this Stipulation and its Order and such provisions' applicability to
6 specified Protected Material at issue.

7 7.4. Reservation of Rights. Nothing in this Stipulation and Order shall be
8 construed so as to require any Producing Party to designate any records or materials
9 as "CONFIDENTIAL." Nothing in this Stipulation and Order shall be construed so
10 as to prevent the admission of Protected Material into evidence at the trial of this
11 action, or in any appellate proceedings for this action, solely on the basis that such
12 Disclosure or Discovery Material has been designated as Protected
13 Material/Confidential Documents. Notwithstanding the foregoing, nothing in this
14 Stipulation and Order shall be construed as a waiver of any privileges or of any rights
15 to object to the use or admission into evidence of any Protected Material in any
16 proceeding; nor shall anything herein be construed as a concession that any privileges
17 asserted or objections made are valid or applicable. Nothing in this Stipulation and
18 Order shall be construed so as to prevent the Designating Party (or its Counsel or
19 custodian of records) from having access to and using Protected Material designated
20 by that Party in the manner in which such persons or entities would typically use such
21 materials in the normal course of their duties or profession – except that the waiver of
22 confidentiality provisions shall apply (see section 6.4(c), *supra*).

23 7.5. Requirement to File Confidential Documents Under Seal. Confidential
24 Documents may be submitted in all law and motion proceedings before the Court if
25 done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or
26 United States District Court, Central District of California Local Rules 79-5.1 and 79-
27 5.2 (as applicable) and pursuant to the provisions of this Stipulation and any
28 associated Order. If any Receiving Party attaches any Confidential Documents to any

1 pleading, motion, or other paper to be filed, lodged, or otherwise submitted to the
2 Court, such Confidential Document(s) shall be filed/lodged under seal pursuant to
3 Federal Rules of Civil Procedure 5.2 and 26 and/or United States District Court,
4 Central District of California Local Rules 79-5.1 and 79-5.2 to the extent applicable.

5 However, this paragraph (§ 7.5) shall not be construed so as to prevent a
6 Designating Party or counsel from submitting, filing, lodging, or publishing any
7 document it has previously designated as a Confidential Document without
8 compliance with this paragraph's requirement to do so under seal (i.e., a producing-
9 disclosing party or counsel may submit or publish its own Confidential Documents
10 without being in violation of the terms of this Stipulation and its Protective Order).

11 Furthermore, a Receiving Party shall be exempted from the requirements of
12 this paragraph as to any specifically identified Confidential Document(s) where –
13 prior to the submission or publication of the Confidential Document(s) at issue – the
14 Designating Party of such specifically identified Confidential Document(s) has
15 waived/withdrawn the protections of this Stipulation and its Order (pursuant to
16 paragraph 6.4, *supra*).

17 A Receiving Party shall also be exempt from the sealing requirements of this
18 paragraph (§ 7.5) where the Confidential Documents/Protected Material at issue is/are
19 **not** documents, records, or information regarding or incorporating:

20 (1) private, personal information contained in peace officer personnel files
21 (such as social security numbers, driver's license numbers or comparable personal
22 government identification numbers, residential addresses, compensation or pension
23 or personal property information, credit card numbers or credit information, dates of
24 birth, tax records and information, information related to the identity of an officer's
25 family members or co-residents, and comparable personal information about the
26 officer or his family);

27 (2) any internal affairs or comparable investigation by any law enforcement
28 agency into alleged officer misconduct; and/or

(3) the medical records or records of psychiatric or psychological treatment of any peace officer or party to this action.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party, preferably (though not necessarily) by facsimile or electronic mail. Such notification shall include a copy of the subpoena or court order at issue;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulation and its Protective Order. Such notification shall include a copy of this Stipulation and its Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by all sides in any such situation, while adhering to the terms of this Stipulation and its Order.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

The purpose of this section is to ensure that the affected Party has a meaningful opportunity to preserve its confidentiality interests in the court from which the subpoena or court order issued.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- (3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulation and Order, the Receiving Party must immediately:

- (a) notify in writing the Designating Party of the unauthorized disclosures;
- (b) use its best efforts to retrieve all copies of the Protected Material;
- (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and
- (d) request such person or persons consent to be bound by the Stipulation and Order.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the specific
7 Protected Material at issue. If a Party's request to file Protected Material under seal is
8 denied by the court, then the Receiving Party may file the information in the public
9 record unless otherwise instructed by the court.

10 **13. FINAL DISPOSITION**

11 Unless otherwise ordered or agreed in writing by the Producing Party, within
12 sixty (60) days after the final termination of this action (defined as the dismissal or
13 entry of judgment by the above named court, or if an appeal is filed, the disposition
14 of the appeal), upon written request by the Producing Party, each Receiving Party
15 must return all Protected Material to the Producing Party – whether retained by the
16 Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-
17 party to whom the Receiving Party produced or shared such records or information.

18 As used in this subdivision, “all Protected Material” includes all copies,
19 abstracts, compilations, summaries or any other form of reproducing or capturing any
20 of the Protected Material, regardless of the medium (hardcopy, electronic, or
21 otherwise) in which such Protected Material is stored or retained.

22 In the alternative, at the discretion of the Receiving Party, the Receiving Party
23 may destroy some or all of the Protected Material instead of returning it – unless such
24 Protected Material is an original, in which case, the Receiving Party must obtain the
25 Producing Party’s written consent before destroying such original Protected Material.

26 Whether the Protected Material is returned or destroyed, the Receiving Party
27 must submit a written certification to the Producing Party (and, if not the same person
28 or entity, to the Designating Party) within sixty (60) days of the aforementioned

1 written request by the Designating Party that specifically identifies (by category,
2 where appropriate) all the Protected Material that was returned or destroyed and that
3 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
4 summaries or other forms of reproducing or capturing any of the Protected material
5 (in any medium, including but not limited to any hardcopy, electronic or digital copy,
6 or otherwise).

7 Notwithstanding this provision, Counsel are entitled to retain an archival copy
8 of all pleadings, motion papers, transcripts, legal memoranda filed with the court in
9 this action, as well as any correspondence or attorney work product prepared by
10 Counsel for the Receiving Party, even if such materials contain Protected Material;
11 however, any such archival copies that contain or constitute Protected Material remain
12 subject to this Protective Order as set forth in Section 4 (DURATION), above.

13 Any violation of this Order may be punished by any and all appropriate
14 including, without limitation, contempt proceedings and/or monetary sanctions.
15

16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
17

18 DATED: July 21, 2025

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

21 By: /s/Kayleigh Andersen
22 Eugene P. Ramirez
23 Kayleigh Andersen
24 Attorneys for Defendants, COUNTY OF
25 SAN BERNARDINO, et al.
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By: /s/ Dale K. Galipo
Dale K. Galipo
Renee Masongsong
Attorneys for Plaintiff

**IVIE McNEILL WYATT
PURCELL & DIGGS**

By: /s/ Rodney S. Diggs
 RODNEY S. DIGGS
 Attorneys for Plaintiff

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: _____

HON. SHASHI H. KEWALRAMANI
United States Magistrate Judge

MK MANNING | KASS

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of **Steffon Barber v. County of San Bernardino, et al., Case No. 5:22-cv-00625-KK-SHK**, I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____